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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,183	02/25/2004	Harold M. Zimmerman		3704
32993	7590	11/17/2006		EXAMINER
MILLER LAW GROUP, PLLC				SOOHOO, TONY GLEN
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			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/786,183	ZIMMERMAN, HAROLD M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tony G. Soohoo	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 8-18-2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10,12-16 and 33-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10,12-16 and 33-53 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a positive recitation of a turbine structure as defined by the turbine mixer of line 4, and presented in the individual elements of lines 9-15. Absent any positive blade or fin structure defined by the claim, as presently worded, the scope is read that the mere structure of a *rotating mixing member*, last paragraph of claim 1 will fully satisfy the intended operation of a "turbine" mixer with a mixing chamber and inlet port. Note in contradistinction to claim 4 which presents a structure which differentiates a mere rotating mix member from that of a turbine fin.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 33-37, 46, are rejected under 35 U.S.C. 102(b) as being anticipated by Grun 3502305. (Newly cited)

The Grun 3502305 (Grun '305) discloses a mixing chamber 1, a dispensing metering means 9 with a screw auger which feeds dry material (which may function to

provide cement powder) into the mixing chamber 1, and having a mixing plate 4 dividing the mixing chamber to an inner an outer chamber whereby there forms an annular gap between the plate and the wall of the housing whereby fins 8 may provide a breakup of the liquid from the nozzles 11, 12 to provide a slurry mixture, and the fins are mounted up to the edge of the outer periphery of the face of the disc surface. (it is noted that the claims do not point out that the fins are disposed outwards from the edge of the disc)

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-7, 40-42, are rejected under 35 U.S.C. 103(a) as being unpatentable over Grun 3502305 in view of Haws 4406548. (Both newly cited)

The Grun '305 reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of a provision of a mobile frame in which the device is mounted.

The reference to Haws discloses a mobile frame 14 which may hold a mixing device which has a supply for dry material and liquid which may be mixed together to form a slurry. The mobile frame provides a convenient manner to produce and dispense the slurry at a desired jobsite, see column 1, lines 5-35.

In view of the showing of the Haws reference that a mobile frame may be utilized to provide and support and supply components of dry and liquid components along with a provision of a mixer to blend the components into a slurry, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the device of Grun '305 with a mobile frame supporting the hopper, liquid supply and mixer so that the slurry produced by the Grun device may be more easily transported to a jobsite.

6. Claims 10, 12-15, and 45, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grun 3502305 in view of Haws 4406548 as applied to claims 1-7, 40-42 above, and further in view of Iwanko 4691957 (Newly cited).

Grun 3502305 in view of Haws 4406548 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the additional use of pegs. The reference to Iwanko teaches that a disk kneading device may include pins 11 positioned on the turbine disk to provide additional kneading to the materials disposed in the mixer 15. Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the Grun disc with additional pegs to provide an added effect of kneading to provide a more consistently worked powder into the slurry mixture.

7. Claims 9, 38, 44, 48-51, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grun 3502305 in view of Haws 4406548 as applied to claims 1-7, 40-42 above, and further in view of Mayer et al 4436430 (previously cited).

Grun 3502305 in view of Haws 4406548 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the positioning of the fins on the 1<sup>st</sup> chamber or inner chamber to produce the movement of fluid through the gap.

The reference to Mayer (et al) reference is cited as evidence to known different configurations of impeller rotors whereby the rotating plate impeller may have fins at the periphery of the disk plate portion, see examples of figure 3, element 62 extending from the cross sectioned plate, or figure 2, element 33 on the right hand side .

In view of the showing that it is known to utilized rotating plate impellers having fins at the periphery of the disk plate portion on one side (i.e. the 1<sup>st</sup> chamber or inner chamber), it is deemed that it would have been obvious to one of ordinary skill in the art to further provide with the Grun reference with other known functional turbine equivalents in order to provide an more effective impeller flow geometry provided by such known impellers vanes.

8. Claims 8, 16, 39, 43, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grun 3502305 in view of Haws 4406548 as applied to claims 1-7, 40-42 above, and further in view of Hollingsworth 4822482 (previously cited).

Grun 3502305 in view of Haws 4406548 discloses all of the recited subject matter as defined within the scope of the claims with the exception of a slidably, adjustable opening at the discharge opening.

The reference to Hollingsworth is cited as showing that it known to utilized a sliding valve element 12 located at an opening which discharges slurry from the opening so as to control the amount of slurry which passes through in discharging from that opening.

In view of the teaching and showing by the Hollingsworth reference that one may utilize a sliding valve to control the rate of slurry discharge from an opening, column 7, line 63-65, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the discharge opening at 3 of the Grun device with a slidably, adjustable, discharge opening so as to better regulate the rate of discharge from the mixing chamber.

### ***Response to Arguments***

9. Applicant's arguments with respect to newly amended or presented claims 1-10,12-16,33-53 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bertoglio 4439042 discloses a hopper which an auger feeds an turbine.

11. Applicant as amended the claims to present limitations in differing dependency and has added new claims which has resulted in a change scope originally presented

and thus necessitated a new grounds of rejection from that of the previous office action. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G. Soohoo  
Primary Examiner  
Art Unit 1723